IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

PAUL FILANOWSKI,	)	
	)	
Appellant,	)	
	)	
v.	)	C.A. No. 06A-02-007-PLA
	)	
PORT CONTRACTORS, INC. and	)	
UNEMPLOYMENT INSURANCE	)	
APPEAL BOARD,	)	
	)	
Appellees.	)	

Submitted: September 1, 2006
Decided: January 2, 2007

ON APPEAL FROM THE UNEMPLOYMENT
INSURANCE APPEAL BOARD
AFFIRMED.

This 2nd day of January, 2007, upon consideration of the appeal of Paul Filanowski from the decision of the Unemployment Insurance Appeal Board denying him unemployment benefits, it appears to the Court that:

1. On May 17, 2004, Paul Filanowski ("Filanowski") began working as a mechanic for Port Contractors, Inc. ("Port"). At that time, Filanowski was provided Port's Company Handbook and acknowledged, in writing, that the handbook contained policies and rules that applied to him and that he agreed to read the handbook and follow it during his employment

with Port. Two policies contained in the handbook are particularly important to this case - one policy requires that employees refrain from damaging or destroying company property; the other policy requires employees to report any and all injuries incurred on the job to their respective supervisor, such that failure to do so will subject employees to disciplinary action up to and including termination.[1]

2. On April 25, 2005, Filanowski allegedly "fabricated" one of Port's work trucks in an effort to secure his personal tools which were located inside the truck. This "fabrication" entailed welding two metal bars to the side of the truck and placing additional locks on the metal bars. Once his superiors at Port learned of the damage to the truck, they placed Filanowski on a "one-time" final written warning and informed him that any future violations of Port's policies would result in his termination.[2]

3. On August 5, 2005, Filanowski was allegedly injured while working at Port when a drawer containing various tools fell on his bicep and shoulder. Filanowski, however, failed to report the injury to Port in accordance with its policy. Port apparently did not learn of Filanowski's injury until August 25, when its insurer, St. Paul's Travelers, informed Port

[1] *See* Docket 5, p. 62; Docket 12, p. 10-37; Docket 15, p. 2.

[2] *See* Docket 5, p. 76; Docket 12, p. 1-4; Docket 15, p. 2-3.

of the incident. As a result, Port terminated Filanowski for violating its policy that all on-the-job injuries be reported, and due to Filanowski already having been on a "one-time" final written warning for damaging Port's truck.[3]

4. Filanowski subsequently filed for unemployment benefits with the Delaware Department of Labor ("Department"). A Claims Deputy from the Department determined that Filanowski was disqualified for receipt of benefits because Port met its burden in establishing just cause for his discharge pursuant to DEL. CODE ANN. tit. 19, § 3314(2) ("Section 3314(2)").[4]

5. Filanowski then appealed the Claims Deputy's decision to the Department's Division of Unemployment Insurance Appeals. A hearing was held in which witnesses testified on behalf of Port and Filanowski. The Appeals Referee, who presided over the hearing, reversed the Claims

[3] *See* Docket 5, p. 12-14, 21, 57, 82-84; Docket 12, p. 3-4; Docket 15, p. 4-6.

[4] *See* Docket 5, p. 6-7. *See also* Section 3314(2): "For the week in which the individual was discharged from the individual's work for just cause in connection with the individual's work and for each week thereafter until the individual has been employed in each of 4 subsequent weeks (whether or not consecutive) and has earned wages in covered employment equal to not less than 4 times the weekly benefit amount. Wage credits earned in such work, if from employment under this title in the employ of any employer liable for assessments under § 3348 of this title, shall not constitute employer's benefits wages in connection with §§ 3349-3356 of this title. Any employer liable for reimbursement payments in lieu of assessments shall reimburse the Unemployment Compensation Fund in accordance with § 3345 of this title when an individual becomes eligible for benefits upon separation from a subsequent employer."

Deputy's decision. He determined that Filanowski was discharged from Port without just cause and, therefore, he was not disqualified from receiving unemployment insurance benefits under Section 3314(2).[5]

6. Consequently, Port appealed the Appeals Referee's decision to the Unemployment Insurance Appeal Board ("Board"). Another hearing was held. Filanowski, however, failed to appear. Nonetheless, the hearing proceeded in his absence and Port was permitted to have its representative testify on its behalf. The Board ultimately determined that Port met its burden to show that Filanowski was discharged for just cause by finding that Filanowski failed to follow Port's policies, specifically the policy requiring him to report all injuries to his supervisor. The Board, therefore, reversed the Appeals Referee's decision and denied benefits to Filanowski.[6]

7. Filanowski now proceeds *pro se* in appealing the Board's decision to this Court. He makes five claims on appeal: (1) he was not terminated for just cause because there is nothing to indicate that he engaged in "willful or wanton" conduct; (2) the Board erred when it permitted hearsay evidence and admitted new evidence at the hearing; (3) the Board did not base its decision on a preponderance of the evidence; (4) the incident

[5] *See* Docket 5, p. 10-55.

[6] *Id.*, p. 65-94.

on August 5, 2005, when various tools fell on Filanowski, did not cause injury and, therefore, there was no injury to report to his supervisor; and (5) Filanowski was not properly notified of the Board hearing on January 11, 2006.[7]

8. Port responds by contending that the Board's determination that Filanowski was terminated for just cause is supported by substantial evidence. That is, the evidence clearly shows that Filanowski was aware of Port's policies forbidding employees from damaging its property and requiring employees to report all injuries; and his blatant disregard for those policies made his actions "willful or wanton" and thus constituted just cause for his termination. Port also claims that the Board is permitted to consider new evidence at its discretion, and that it did not rely on hearsay in making its decision. Lastly, Port maintains that Filanowski was properly notified of the hearing and was not denied due process.[8]

9. The Board also submitted a brief in this appeal. While the Board does not address the merits of Filanowski's appeal, because "persons performing adjudicatory functions have no cognizable personal interest

[7] *See* Docket 9, p. 5.

[8] *See* Docket 15, p. 9-12.

before a higher tribunal in seeking to have their rulings sustained,"[9] the Board does argue that Filanowski's appeal is procedurally barred, and that it did not abuse its discretion in denying Filanowski's request for a rehearing. Specifically, the Board contends that, pursuant to DEL. CODE ANN. tit. 19, § 3322(a) ("Section 3322(a)"), Filanowski is not entitled to judicial review because he failed to exhaust all administrative remedies available to him prior to filing this appeal. That is, Filanowski's failure to appear at the Board hearing constitutes a failure to avail himself of all administrative remedies prior to appealing to this Court. The Board, therefore, maintains that Filanowski is not entitled to judicial review of the merits of his case.[10] Further, the Board contends that it did not abuse its discretion when denying Filanowski's request for a rehearing because the record clearly indicates that he received notice of the hearing, and he offered no viable excuse for his absence from the hearing.[11]

10. Appellate review of a Board decision is limited. The Court's function is confined to determining whether the Board's decisions are free from legal error, whether substantial evidence supports the Board's findings of fact and conclusions of law, and whether the Board abused its discretion

[9] *Brooks v. Johnson*, 560 A.2d 1001, 1003 (Del. 1989).

[10] *See* Docket 16, p. 2-5.

[11] *Id.*, p. 8-9.

when deciding "discretionary" issues.[12] Questions of law, which arise in ascertaining if there was legal error, are subject to *de novo* review which requires the Court to determine whether the Board erred in formulating or applying legal precepts.[13] "Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. It is … more than a scintilla but less than a preponderance of the evidence."[14] Abuse of discretion "occurs when the Board 'exceeds the bounds of reason in view of the circumstances and has ignored recognized rules of law or practice so as to produce injustice.'"[15] Stated differently, the

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[12] *See Fed. Street Fin. Serv. v. Davies*, 2000 WL 1211514, at *2 (Del. Super. Ct. June 28, 2000) ("In reviewing the decisions of the UIAB [Unemployment Insurance Appeal Board], this Court must determine whether the findings and conclusions of the UIAB are free from legal error and supported by substantial evidence in the record."); *Dove v. Boardwalk Plaza*, 1995 WL 656845, at *2 (Del. Super. Ct. Sept. 25, 1995) ("On appeal of a discretionary ruling, this Court's scope of review is limited to whether the Board abused its discretion."); *Mintz v. Wilmington Trust Co.*, 1995 WL 862116, at *2 (Del. Super. Ct. Nov. 15, 1995) (quoting *Funk v. Unemployment Ins. Appeal Bd.*, 591 A.2d 222, 225 (Del. 1991)) (When reviewing "discretionary acts of the Board rather than the Board's determination as to the merits of the case, '[t]he scope of review … is whether the Board abused its discretion. Absent abuse of discretion [the Court] must uphold a decision of an administrative tribunal.'").

[13] *Bermudez v. PTFE Compounds, Inc.*, 2006 WL 2382793, at *3 (Del. Super. Ct. Aug. 16, 2006).

[14] *Breeding v. Contractors-One, Inc.*, 549 A.2d 1102, 1104 (Del. 1988).

[15] *Nardi v. Lewis*, 2000 WL 303147, at *2 (Del. Super. Ct. Jan. 26, 2000) (citation omitted).

Board abuses its discretion when it makes a ruling "based on 'clearly unreasonable or capricious grounds.'"[16]

11. Before applying these standards to the merits of Filanowski's appeal, the Court must first address the Board's procedural argument that, under Section 3322(a), Filanowski is not entitled to judicial review because he failed to exhaust all administrative remedies by not appearing at the Board hearing. The Board primarily relies upon *Griffin v. Daimler Chrysler*[17] as an example of when this Court dismissed a claimant's appeal because the claimant failed to exhaust all administrative remedies by not appearing at the Board hearing. However, *Griffin* (and a multitude of other cases where this Court determined that a claimant's failure to appear at a Board hearing amounted to a failure to exhaust all administrative remedies)[18] is factually dissimilar to this case. *Griffin*, and the cases cited in footnote 18,

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[16] *K-Mart, Inc. v. Bowles*, 1995 WL 269872, at *2 (Del. Super. Ct. Mar. 23, 1995) (citation omitted).

[17] 2000 WL 33309877 (Del. Super. Ct. Apr. 27, 2001).

[18] *See Finocchiaro v. Panco Mgmt.*, 2006 WL 2993565 (Del. Super. Ct. Oct. 20, 2006); *Gullion v. Advance Xing Pain*, 2006 WL 1067280 (Del. Super. Ct. Apr. 24, 2006); *Harris v. Mountaire Farms of Del.*, 2003 WL 22853425 (Del. Super. Ct. July 16, 2003); *Bell v. Ne. Treatment Ctrs., Inc.*, 2003 WL 21500336 (Del. Super. Ct. June 30, 2003); *Jackson v. Murphy Marine Servs., Inc.*, 2002 WL 1288791 (Del. Super. Ct. Apr. 24, 2002); *Wilson v. Servalli Rest.*, 1999 WL 1611271 (Del. Super. Ct. Apr. 30, 1999); *Rodgers v. Draper King Cole, Inc.*, 1996 WL 528384 (Del. Super. Ct. Aug. 2, 1996); *Mintz.*, 1995 WL 862116. *But see Dvorak v. E.I. Du Pont de Nemours & Co.*, 1985 WL 188989 (Del. Super. Ct. Mar. 22, 1985) (holding the claimant *did* exhaust his administrative remedies by appealing to the Board and then seeking judicial review of the Board's decision, even though claimant failed to appear at the Board hearing).

involved a claimant who did not receive a favorable decision from the Appeals Referee, appealed that decision to the Board, failed to appear at the Board hearing and, as a result, the Board did not conduct a hearing and dismissed the appeal. In this case, however, Filanowski received a favorable decision from the Appeals Referee and Port, not Filanowski, appealed that decision to the Board. Although Filanowski failed to appear at the hearing, the Board did *not* dismiss the appeal but rather held a hearing and considered the merits of the case, including reviewing the evidence that was before the Appeals Referee and considering new evidence. In short, *Griffin* involved a *claimant* appealing to the Board and the Board ultimately dismissing the case for the claimant's failure to appear at the hearing; whereas, here, the *employer* appealed to the Board and the Board decided the case on its *merits*, rather than dismissing the case due to Filanowski's failure to appear. Given these distinctions, and because the "application of the doctrine of exhaustion of administrative remedies is a matter of judicial discretion,"[19] the Court is unwilling to find that Filanowski failed to exhaust his administrative

[19] *Levinson v. Del. Comp. Rating Bureau, Inc.*, 616 A.2d 1182, 1189 (Del. 1992).

remedies by not appearing at the Board hearing. Accordingly, the Court will address the substantive merits of Filanowski's appeal. [20]

A. Just Cause

12. Filanowski claims that Port did not terminate him for just cause because there is no evidence suggesting that he engaged in "willful or wanton" conduct. The Court does not agree, and finds that the Board's determination that Filanowski was terminated for just cause, and is therefore ineligible to receive unemployment benefits under Section 3314(2), is supported by substantial evidence.

13. Just cause has been defined as a "willful or wanton act or pattern of conduct in violation of the employer's interest, the employee's duties, or the employee's expected standard of conduct."[21] An employee acts in a willful or wanton way when he is "'conscious of his conduct or

[20] The Court is mindful of the Board's reliance on *Baker v. Hosp. Billing & Collection Serv., Ltd.*, 2003 WL 21538020 (Del. Super. Ct. Apr. 30, 2003), and its factual similarity with this case. In *Baker*, this Court dismissed the claimant's appeal because of his failure to exhaust the administrative process by not appearing at the Board hearing even though, like in this case, the employer was the party which filed the appeal before the Board and the Board held a hearing and addressed the merits of the appeal, rather than dismissing the case for the claimant's failure to appear. However, the Court questions whether *Baker* was correct to dismiss the claimant's appeal to this Court and, therefore, out of an abundance of caution, the Court will address the merits of Filanowski's appeal (as did the Court in *Baker* address the merits of that claimant's appeal).

[21] *Avon Prods., Inc. v. Wilson*, 513 A.2d 1315, 1316 (Del. 1987).

recklessly indifferent of its consequences.'"[22] It follows that "'[j]ust cause' exists where an employee violates a company rule or policy, especially where the employee is given notice of the rule, such as in a company handbook."[23]

14. In finding that Filanowski's actions were willful and wanton, the Board relied on evidence that was before the Appeals Referee and new evidence. Specifically, the evidence the Board relied upon included: (1) Port's company handbook which contained a policy that requires employees to refrain from damaging or destroying company property, and a policy that requires employees to report any and all injuries incurred on the job to their respective supervisor;[24] (2) Filanowski's acknowledgment through his signature that he received Port's company handbook containing those policies and, therefore, was aware of these policies;[25] (3) Jacqueline Latina's, Port's Director of Operations, testimony that Filanowski damaged Port's truck by welding two metal bars to the side of the truck and placing

[22] *Mosley v. Initial Sec.*, 2002 WL 31236207, at *2 (Del. Super. Ct. Oct. 2, 2002) (citation omitted).

[23] *Id. See also Wilson v. Christiana Care Health Servs.*, 2006 WL 3492369, at *2 (Del. Super. Ct. Nov. 30, 2006) ("[J]ust cause will exist if an employee knows of a company rule or policy and nevertheless violates that policy[.]").

[24] *See* Docket 5, p. 68; Docket 12, p. 18, 33.

[25] *See* Docket 5, p. 62, 68.

additional locks on the metal bars; and further testifying that Port did not learn of Filanowski's injury stemming from the August 5, 2005 incident until it was notified of the injury by its workers' compensation provider, St. Paul's Travelers;[26] and (4) Walt Dawson's, Filanowski's supervisor, testimony at the hearing before the Appeals Referee that Filanowski never notified him that he was injured as a result of the August 5, 2005 incident, and that he did not learn of that injury until he later received a letter from Filanowski's physical therapist. [27] Based on the aforementioned evidence relied upon by the Board, the Court concludes the Board's findings of facts and conclusions of law – specifically that Filanowski knowingly violated Port's policy requiring him to report all injuries and, as such, just cause existed for his termination, thus precluding him from receiving benefits under Section 3314(2)[28] - are supported by substantial evidence.

B. Evidence

15. Filanowski contends the Board erred when it permitted hearsay evidence and admitted new evidence at the hearing. This argument is

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[26] *Id.*, p. 66-67.

[27] *Id.*, p. 26, 67-68. *See also id.*, p. 4, 11-15, 16-55, 60, 62, 66-68, 70-94; Docket 12, p. 1-38.

[28] *See Wilson*, 2006 WL 3492369, at *2 ("An employee is not eligible to receive unemployment benefits if an employer establishes that she was terminated for 'just cause.'").

unavailing. "Administrative agencies, such as the Board, are not strictly bound by the technical rules of evidence."[29] For that reason, "[h]earsay is commonly permitted" [30] and "does not warrant a reversal of the Board's decision so long as there is other competent evidence with probative value in the record to support the Board's decision."[31] That is, the "findings of [the Board] cannot rest alone on hearsay evidence."[32] The Board is equally permitted to "hear an appeal from a referee's decision on the basis of the evidence previously submitted *or by taking additional evidence*."[33] Therefore, the Board did not err in admitting new evidence and, to the extent it permitted and relied on hearsay evidence (which appears to not have occurred), the Board's findings did not rest solely on such evidence.

C. Notice

16. Filanowski maintains he was not notified of the Board hearing held on January 11, 2006. Although Filanowski fails to articulate how the

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[29] *Goldsmith v. Unemployment Ins. Appeal Bd.*, 1982 WL 591942, at *2 (Del. Super. Ct. Mar. 9, 1982).

[30] *McMillin v. Royal Surf Club*, 1991 WL 18075, at *2 (Del. Super. Ct. Feb 1, 1991).

[31] *Goldsmith*, 1982 WL 591942, at *3.

[32] *Barnett v. Div. of Motor Vehicles*, 514 A.2d 1145, 1147 (Del. 1986).

[33] *Goldsmith*, 1982 WL 591942, at *3 (emphasis supplied). *See also* DEL. CODE ANN. tit. 19, § 3320(a): "The Unemployment Insurance Appeal Board (UIAB) may on its own motion, affirm, modify, or reverse any decision of an appeal tribunal on the basis of the evidence previously submitted to the appeal tribunal or it may permit any of the parties to such decision to initiate further appeal before it."

alleged failure to provide notice adversely affects his rights, the Court interprets his contention to be that the Board committed an error of law in failing to provide him with due process by notifying him of the hearing.[34]

17. "Delaware law presumes that a mailing with the proper address and postage has been received by the intended claimant."[35] "This presumption may be rebutted, but the addressee's mere denial of receipt is generally not enough to rebut."[36] Here, the record indicates that Filanowski was sent notice of the hearing to the listed address of record (630 Summit Avenue, Philadelphia, PA 19128 - the same address that is currently listed in the Court's docket), and that the notice was not returned.[37] The record is also devoid of any indication that there was an error which could have caused the notice to be received untimely.[38] Filanowski responds by merely claiming he did not receive the notice letter from the Board. This is not enough to rebut the presumption and, without more, "the presumption of

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[34] *See Jackson v. Unemployment Ins. Appeal Bd.*, 1986 WL 11546, at *2 (Del. Super. Ct. Sept. 24, 1986) (The Court interpreted claimant's "argument to be that the Board committed an error of law, not in its decision, but in failing to provide him with due process by notifying him of the meeting.").

[35] *Lively v. Dover Wipes Co.*, 2003 WL 21213415, at *1 (Del. Super. Ct. May 16, 2003).

[36] *Jackson*, 1986 WL 11546, at *2.

[37] *See* Docket 5, p. 65.

[38] *Id.*, p. 97.

delivery controls."[39] Therefore, the Court finds the Board provided Filanowski with proper notice and did not deprive him of due process.

D. Rehearing

18. The Board also did not deprive Filanowski of due process when it denied his request for a rehearing. "[T]he law is clear that the Board is free to grant or deny a request for a rehearing and that this Court will not disturb such a discretionary decision absent an abuse of discretion."[40] Here, the Board relied on the record which clearly indicates that Filanowski was provided with proper notice. There being no viable excuse from Filanowski for his alleged failure to receive such notice, the Board denied his request for a rehearing. The Board's denial was not "clearly unreasonable" or based on "capricious grounds" and, therefore, it was not an abuse of its discretion.[41]

[39] *Jackson*, 1986 WL 11546, at *2.

[40] *Nardi*, 2000 WL 303147, at *2.

[41] *See K-Mart, Inc.*, 1995 WL 269872, at *2.

19. Based on all the foregoing, the Court is satisfied that the Board did not abuse its discretion, and that its decision is supported by substantial evidence and free from legal error. Accordingly, the Board's decision denying Filanowski unemployment benefits is **AFFIRMED**.

IT IS SO ORDERED.

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Peggy L. Ableman, Judge

Original to Prothonotary

cc: Paul Filanowski
Jennifer C. Bebko Jauffret, Esq.
Mary Page Bailey, Esq.